IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6243 OF 2004

Sachin Nagnath Hege .. Petitioner
V/s
Shahaji Ramchandra Ghorpade .. Respondent

Mr.G.S.Godbole for the Petitioner.
Mr.P.U.Badadare for the Respondent.

CORAM : DR.S.RADHAKRISHNAN J.
DATE : 8th December, 2006.

P.C.:

1. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this Petition, the Petitioner is challenging the order dated 27th February, 2003 whereby the application taken out by the Petitioner to bring him on record as a legal representative of the deceased Appellant was dismissed on the ground that no steps were taken to obtain probate of the will for more than two years. As a consequence of the aforesaid order dated 27th February, 2003 the appeal also came to be dismissed on the same day by an order dated 27th February, 2003. Both the above orders are challenged in this petition.

3. Mr.Godbole, the learned Counsel appearing on behalf of the Petitioner has contended that the Appellant (original Defendant No.1) - Choudappa Parappa Aland had executed a will on 6th May, 2000 whereby he had bequeathed all the rights, assets in the firm known as

"M/s.Shahji Ramchandra Ghoapade". It appears that the said Appellant Mr.Choudappa died on 22.9.2000 and the Petitioner had preferred the application to bring himself on record as legal representative of the said appellant, which was rejected.

4. Mr.Godbole, the learned Counsel appearing on behalf of the Petitioner has pointed out that the aforesaid application to bring on record the legal representative was made within the prescribed period of 90 days as per Order XXII of the Code of Civil Procedure from the date of death of the Appellant. The Said appellant died on 22.9.2000 and the application to bring on record the legal representative was made on 15.12.2000 and as such it is contended by the learned Counsel for the Petitioner that the said application ought not to have been rejected.

5. Mr.Godbole contended that as far as Solapur is concerned, in case of bequest by will, there is no necessity of obtaining a probate of the will at all as the provisions regarding obtaining of probate as per the Indian Succession Act do not apply in Solapur region. Mr.Godbole submitted that even assuming that the Petitioner had to obtain the probate, merely because the probate was not obtained would not be a ground to reject the application to bring the Petitioner on record as a legal representative. According to Mr.Godbole, the rejection of the said application is totally

unsustainable. Mr.Godbole relied upon two judgments in that behalf. Firstly in the case of **Tynala Musalayya V/s.J.Mohanraj and Others - AIR 1982 AP 410**, wherein the Andhra Pradesh High Court has clearly held that the legatee under Will can be added as a legal representative, and that the production of probate of a will is not essential. Similarly, he also relied upon the judgment of the Patna High Court in the case of **Arjun Prasad and Others V/s Biteshwar Singh - AIR 1982 Patna 208,** wherein, the Patna High Court has also taken a view that the in case of legatee claiming to be the legal representative of the deceased testator under the will there is no necessity of probate or letters of administration before being impleaded as a legal representative.

6. The learned Counsel for the Respondents also could not dispute that there was no necessity of obtaining any probate in Solapur with regard to the Will.

7. Under the aforesaid facts and circumstances of the case, the impugned order dated 27th February, 2003 whereby the application to bring the legal representative on record was rejected by the Trial Court is totally unsustainable in law. Similarly, the consequential order of the same date rejecting the appeal also cannot be sustained. Hence, Rule is made absolute in terms of prayer clauses (a) and (b) of the Petition. Petition stands disposed of.

8. Having regard to the facts and circumstances of the case, hearing of the Civil Suit No.139 of 1980 pending before the learned Civil Judge, Senior Division, Solapur is expedited, and the learned Judge is directed to dispose of the same as expeditiously as possible.

(DR.S.RADHAKRISHNAN,J.)